

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

FILED
FEB 16 2010
CLERK

SOUTHERN DIVISION

UNITED STATES OF AMERICA,

CR. 07-40055-24

Plaintiff,

MEMORANDUM OPINION
AND ORDER REGARDING
PETITION TO DISCLOSE
GRAND JURY TESTIMONY

- vs -

CRAIG LEWIS,

Defendant.

The United States, by and through counsel has petitioned the Court pursuant to FED. R. CRIM. P. 6(e)(3)(E)(I) to permit disclosure of grand jury testimony in the above-entitled action for the Government's use in considering, and potentially defending a tort claim filed by the Defendant, Craig Lewis. (Doc. 1812). The petition was mailed to Craig Lewis on January 15, 2010, and he has not responded.

In an administrative tort claim pursuant to the Federal Tort Claims Act Lewis has alleged he was falsely imprisoned and his due process protection against malicious prosecution was violated because his original Indictment was procured by false testimony before the grand jury. The Government requests disclosure of two grand jury transcripts that mention Lewis and his role in the conspiracy to distribute crack cocaine, a conspiracy to which he ultimately pled guilty.

A request for the disclosure of grand jury proceedings that falls under an exception to the secrecy requirements of FED. R. CRIM. P. 6 must also contain a showing of a particularized need for grand jury materials before disclosure becomes appropriate. The request must show that the disclosure is: (1) required to avoid possible injustice in a different judicial proceeding, (2) greater than the need for continued secrecy, and (3) specifically directed at the material required. *United States v. McDougal*, 559 F.3d 837 (8th Cir. 2009).

Since the basis of Lewis' claim is that he was injured by false testimony before the grand jury the Government has established that disclosure is required to avoid possible injustice in the


administrative tort claim process. Since all of the named co-conspirators but one have been convicted and that one named co-conspirator was acquitted after a jury trial, the need for continued secrecy is not greater than the need for disclosure in the administrative tort claim process.

The Government contends that the request for the two grand jury transcripts that mention Lewis and his role in the conspiracy to distribute crack cocaine is specifically directed at the material required. While that contention appears reasonable, the Court cautions the Government to both avoid any possible injustice in the administrative claim and to accommodate the public interest in secrecy of grand jury proceedings by filing under seal with the administrative body processing the federal tort claim all portions of all grand jury transcripts which reference Craig Lewis and to redact from these transcripts all portions of the grand jury testimony which do not mention Craig Lewis. Accordingly

IT IS ORDERED that the Government's petition to permit disclosure of grand jury testimony (Doc. 1812) is granted to the extent that the Government may disclose the requested grand jury testimony by filing under seal with the administrative body processing Lewis' federal tort claim all portions of all grand jury transcripts which reference Craig Lewis and to redact from these transcripts all portions of the grand jury testimony which do not mention Craig Lewis.

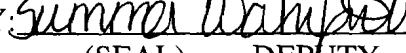
Dated this 15th day of February, 2010.

BY THE COURT:


Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: 
(SEAL) DEPUTY